

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW HAMPSHIRE

Catherine Burke and  
Mikael Rolfhamre

v.

Civil No. 06-cv-317-JD

Brookline School District

O R D E R

After the court granted Brookline School District's motion to dismiss the complaint, Catherine Burke and Mikael Rolfhamre, who are proceeding pro se, moved for reconsideration. Their motion is supported by a memorandum of law filed by the Disabilities Rights Center, Inc., as amicus curiae. The District opposes reconsideration.

In the order dismissing the complaint, the court found that the plaintiffs had limited their claims to retaliation under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12203, and violation of the procedural requirements of Section 504 of the Rehabilitation Act. The plaintiffs did not pursue claims under the Family Educational Rights and Privacy Act ("FERPA"), the Individuals with Disabilities in Education Act ("IDEA"),<sup>1</sup> and 42

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<sup>1</sup>The District repeatedly refers to the "IDIEA." The court assumes that the District intended the Individuals with Disabilities in Education Act or IDEA as it is commonly abbreviated.

U.S.C. § 1983, and those claims were dismissed. The court held that the plaintiffs' ADA and Section 504 claims were barred by the holding in Diaz-Fonseca v. Puerto Rico, 451 F.3d 13, 29 (1st Cir. 2006), that "where the underlying claim is one of violation of the IDEA, plaintiffs may not use § 1983--or any other federal statute for that matter--in an attempt to evade the limited remedial structure of the IDEA."

The plaintiffs argue, with the assistance of amicus curiae, that their claims are independent retaliation claims under the ADA and Section 504 which are not restricted by the holding in Diaz-Fonseca.<sup>2</sup> The First Circuit stated in Diaz-Fonseca that "the IDEA does not restrict rights and remedies that were already independently available through other sources of law." Id. The plaintiffs contend that because the ADA and Section 504 also provide remedies for retaliation, their claims are independent of the IDEA.

As the court noted in the previous order, however, the plaintiffs' claims are premised on violations of the IDEA and the District's response to the plaintiffs' efforts to obtain IDEA benefits for their children. Because of similar provisions in the ADA, Section 504, and the IDEA, claims arguably might arise

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<sup>2</sup>They acknowledge that their complaint was "not artfully drafted." Mem. at 9.

under all three statutes. The plaintiffs assert in the memorandum submitted on their behalf by amicus curiae that "the gravamen of their claims are that Defendant 'engaged in retaliation, coercion, intimidation and interference' as a result of their advocacy for children under the Individuals with Disabilities Education Act . . . ." Mem. at 1. The IDEA provides for retaliation claims that are related to rights protected under the IDEA. See Weber v. Cranston Sch. Comm., 212 F.3d 41, 51-52 (1st Cir. 2000). Only claims for violations of rights independently provided under the other statutes are actionable outside of the restricted remedies allowed under the IDEA. Diaz-Fonseca, 451 F.3d at 29. The plaintiffs have not convinced the court that their claims are based on rights and remedies that are independent of the IDEA.

Conclusion

For the foregoing reasons, the plaintiffs' motion for reconsideration (document no. 15) is denied.

SO ORDERED.

  
Joseph A. DiClerico, Jr.  
United States District Judge

March 15, 2007

cc: Catherine E. Burke, pro se  
Dean B. Eggert, Esquire  
Ronald K. Lospennato, Esquire  
Mikael Rolfhamre, pro se